

Message Text

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ACTION IO-14

INFO OCT-01 EUR-25 ISO-00 AF-10 ARA-16 EA-11 NEA-10 RSC-01

IOE-00 CAB-09 CIAE-00 COME-00 DODE-00 DOTE-00 EB-11

INR-10 NSAE-00 FAA-00 USIE-00 PM-07 H-03 L-03 NSC-07

PA-04 PRS-01 SP-03 SS-20 SSO-00 NSCE-00 INRE-00 DRC-01

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FM AMCONSUL MONTREAL

TO SECSTATE WASHDC IMMEDIATE 4622

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FROM USREP ICAO

E. O. 11652: N/A

TAGS: ETRN, CA

SUBJ: ICAO - LEGAL OPINION ON SENEGAL PROPOSAL (ITEM 8 C-OB
81/21), APRIL 10

REF: MONTREAL 0331

1. SUMMARY: COUNCIL VOTED 4/0/0 NOT TO DISCUSS QUESTION OF WHETHER
TO CIRCULATE LEGAL OPINION (LACKED STATUTORY MAJORITY). VOTING
FOR: US/JAPAN/NICARAGUA PLUS UK.

2. OUTCOME WAS NOT ANTICIPATED NOR PLANNED (EVEN BY INSTIGATORS)
BUT REFLECTED VERY ACCURATELY COUNCILS REFUSAL TO BECOME EMBROILED
AGAIN IN SENEGAL PROPOSAL QUESTION. IN OPINION USREP IT WAS
BEST OF ALL ALTERNATIVES -- LEAVES OPEN ANY/ALL POSSIBILITIES
FOR FUTURE ACTION; SET NO PRECEDENT; PRECLUDED ANY POSSIBILITY
OF NEGATIVE VOTE AGAINST CIRCULATING OPINION AND AVOIDED POSITIVE
DECISION WHICH WOULD HAVE REOPENED DEBATE ON SENEGAL PROPOSAL;
SET NO PRECEDENT PRO OR CONVLLEGAL OPINIONS; AND RECORDED
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DURING DISCUSSION, STATEMENT BY PRES/COUNCIL AND SECGEN THAT

LEGAL OPINION WILL BE ISSUED AT TIME ANY ITEM UNDER CONSIDERATION.

3. LAST CONSULTATIONS BEFORE COUNCIL MEETING INDICATED; (A) DIALLO WOULD NOT OBJECT TO CIRCULATING OPINION BUT WOULD ASK REOPENING DEBATE ON ENTIRE PROPOSAL. (B) ARGENTINA SAID LA GROUP HAD AGREED TO GO ALONG WITH CIRCULATING OPINION BUT WOULD HAVE TO SUPPORT REOPENING DEBATE ON SENEGAL PROPOSAL. (C) LEBANON/ EGYPT WERE FOR CIRCULATING BUT LEBANON WOULD NOT HAVE SUPPORTED REOPENING -- EGYPT WOULD. (D) EUROPE CAUCUS COMPLETELY SPLIT AND AGREED "EVERYONE ON HIS OWN." UK ADVISED USREP HE HAD NO PROBLEM VOTING WITH US "AND LOOKING SILLY." HE ASKED IF A FORMAL APPEAL TO US TO DROP MATTER WOULD BE INFLUENTIAL -- USREP REPLIED NO, THAT DEPT HAD TAKEN FINAL POSITION. BELGIUM AND ITALY WOULD PROBABLY HAVE VOTED AGAINST; OTHER EUROPEAN STATES WOULD HAVE ABSTAINED; GERMANY (WHO WAS STRONGEST FOR LEGAL OPINION DURING SEN PROP DEBATE) ALSO MADE FORMAL APPEAL TO US TO "LEAVE MATTER ALONG" IN PRESENT CONTEXT. HAD DISCUSSION GOTTEN UNDERWAY ON CIRCULATING, GERMANY/ITALY/JAPAN WOULD HAVE PROPOSED "INDEFINITE DEFERMENT" ENTIRE QUESTION LEGAL OPINION. US ENDEAVORED DISSUADE THEM POINTING OUT THEY AS WELL AS WE MIGHT WISH OPINION ISSUED IN CONNECTION WITH FUTURE SENEGAL PROPOSAL. FRANCE WOULD HAVE ABSTAINED ON VOTE BUT WAS INFLUENTIAL IN BRINGING ABOUT FINAL QUESTION AND VOTE. (E) USSR HAD "NO OBJECTION" TO CIRCULATING BUT SUPPORTED NIGERIA WHEN HE DEMANDED VOTE ON OB. (F) INDIA AND PAKISTAN WOULD HAVE VOTED AGAINST CIRCULATION; INDONESIA PROBABLY WOULD HAVE ABSTAINED.

3. PRES/COUNCIL OPENED ITEM ASKING IF THERE WERE ANY OBJECTIONS TO CIRCULATING LEGAL OPINION . NONE. WHEN REPEATED, SENEGAL MADE STATEMENT THAT AGREEMENT TO CIRCULATE WAS AGREEMENT TO REOPEN DEBATE ON HIS PROPOSAL. NIGERIA INTERVENED ASKING WHAT WAS THE ITEM ON THE O/B AND WORK PROGRAM UNDER DISCUSSION, SINCE NO STATE HAD MADE PROPOSAL AND THERE WAS NO WORKING PAPER. US INTERVENED SAYING NO NEW ITEM NECESSARY -- US REQUESTING IMPLEMENTATION DISCUSSION MADE MARCH 6, AND READ IT FROM MINUTES. FRANCE INTERVENED IN STRONG OPPOSITION "WITH APOLOGIES TO USREP" SAYING "IN HIS OPINION US HAD SIMPLY "READ A STATEMENT" AT MARCH 6 MEETING -- COUNCIL HAD NOT "TAKEN A DECISION". NIGERIA PRESSED AGAIN SAYING WE WERE ADDING NEW ITEM TO OB FOR DISCUSSION THAT NO STATE HAD ASKED BE TAKEN UP. PRES THEN ASKED IF ANY LIMITED OFFICIAL USE

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STATE PROPOSED THIS ITEM FOR DISCUSSION ON WORK PROGRAM THIS SESSION. NO ONE DID. RATHER THAN LOSE BE DEFAULT USREP MADE PROPOSAL WHICH WAS NOT SUPPORTED UNTIL AWKWARD SILENCE FORCED UK AND JAPAN SUPPORT. NIGERIA REMINDED COUNCIL VOTE FOR ITEM ON WORK PROGRAM/OB AUTOMATICALLY REQUIRES STATUTORY (RULE 27(D)). VOTE FOLLOWED.

4. USREP DELIBERATELY LIMITED PROPOSAL TO LANGUAGE IN C-OB

81/21 ITEM 8 AND TO THIS RPT THIS SESSION WHICH ENDED ONE HOUR
LATER. ICAO SESSIONS ARE INDEPENDENT AND WORK PROGRAM DOES NOT
CARRY OVER. USREP SUGGESTS FOLLOWING POSSIBLE ALTERNATIVES:
(A) REPEAT EFFORT AFTER PREPARATION, EARLY JUNE, FOR NEXT SESSION;
(B) MAKE AFFIRMATIVE PROPOSAL FOR COUNCIL TO RECOMMEND VOTING
10-10-10 IN THREE PARTS (AS HAS BEEN DONE IN PAST). IF
MODIFICATION ATTEMPT ADE BY DIALLO, REQUEST LEGAL OPINION.
(C) AWAIT SENEGAL NEXT MOVE AND RESPOND APPROPRIATELY. SEC GEN
AND PRES/COUNCIL PREPARED GIVE OPINION IN COUNCIL/ASSEMBLY AT
ONCE WHEN A PROPOSAL IS MADE AND UNDER CONSIDERATION.
FYI. UNFORTUNATE THAT US INSTRUCTIONS CHANGED MARCH 6 FROM
REQUEST FOR ORAL PRESENTATION BY SEC GEN, TO WRITTEN
OPINION REGARDLESS OUTCOME. END FYI.

5. ATMOSPHERE ONE OF GREAT RELIEF AND NO STRINGS/PREJUDICES
EXIST RE NEW APPROACH, EXCEPT WE SHOULD NOT RPT NOT CONSIDER
ANY EFFORT THAT WILL REACTIVATE SENEGAL PROPOSAL.
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